EDITOR'S NOTE

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No. 93-1713

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Supreme Court, U.S.
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In The Supreme Court of the United States

October Term 1993

DAVID WAYFIELD,

Petitioner,

v.

TOWN OF TISBURY, MARJORIE CONVERY,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

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ERRATA AND AMENDMENT TO THE PETITION

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This supplemental brief, actually an errata, is submitted because in the original Petition there were errors on page #14, which significantly distorted the facts of the case. The following page, designated as "14(a)," replaces the original defective page 14.

The original page #14 portrays the Petitioner as an alleged assailant, while in fact, as evidenced by the Police Report, one of the Respondents, Vineyard Haven Public Library (VHPL) director Marjorie Convery, an agile, middle-aged women, forcibly attempted to body search and then to detain this 67 year old, post-myocardial-infarction Petitioner.

Conversely, the Respondents never accused the Petitioner of any assault, a fact also transparent from the decisions of courts below (included in the Appendix of the original Petition) and Defendant's Motion to Dismiss affirmed by the US District Court in Boston. Actually, due to his pacifist beliefs, the Petitioner never resorted to physical force even in self-defense.

The Appendix consisting of a police report is included, because even in self-serving statements of Ms. Convery, it reveals absence of hints by her of any aggressive behavior on the part of the Petitioner (B 2-3).

On December 15, 1990 the petitioner approached Ms. Convery, the director of the VHPL with a suggestion (which was refused) to establish a balance to a library's collection in regard to the WWII history and the Holocaust and by purchasing or accepting as a gift, scholarly revisionist materials.

Within one hour, the petitioner was accused by the library director of stealing one of the two menorahs on display at the library for celebration of the Hanukah season. Simultaneously, Convery attempted to search petitioner's belongings, and when rebuked, she assaulted him while the petitioner attempted unobtrusively to leave the library.

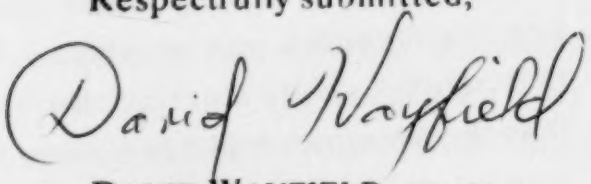
The police report explains that the director "asked Wayfield if she could look into his canvas tote bag" (B - 1), and when refused, she said, she "attempted to stop him" from leaving the library, (B-2). Three days later, Ms. Convery reported to the police that "she did not bel[ie]ve the [m]enorah was removed from the library, just put behind the door," (B- 5).

The Court of Appeals First Circuit wrote, and the respondent VHPL did not object, that "it is possible to infer that the accusation of stealing was a pretext and that the real reason for the 'assault' and the Director's letter banning Wayfield [from the library], was

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



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B -1

TISBURY POLICE DEPARTMENT

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On 12-15-90 at about 15.00 hrs, I received a call from the Comm. Center to go to the Vineyard Haven Library concerning a theft. When I arrived I was met by library Director, Marjorie Convery. Convery told me a man known to her as David Wayfield had been doing research in the children room of the Library where a menorah was on display. Convery told me that her Assistant Librarian, Karen Achille, told her that the Menorah had been moved from the display case to another location in the children's reading room and that David Wayfield is the only person using the children's reading room. When Achille returned downstairs to the children's reading room, the Menorah was missing. Achille reported the missing Menorah to Convery immediately and returned to the children's reading room and confronted Wayfield. Convery asked Wayfield if he had the Menorah and Wayfield responded "no comment." Convery repeatedly asked Wayfield to return the Menorah. Wayfield told Convery that she would have to discuss it in court. Convery asked Wayfield if she could look into his canvas tote bag that he had on the table and Wayfield told her no.

Convery told me that Wayfield wanted her to sit down and have a discussion about Zionist plots. Convery told Wayfield that she would sit down after he returned the Menorah. Convery told me that Wayfield then became angry and left the Library with the canvas bag which Convery believed contained the Menorah because the bag appeared as if it had a heavy object in it, not papers or books. Convery followed Wayfield and attempted to stop him and told him that she will be calling the police. Wayfield responded that would be fine and he will discuss it in court. Convery told me that no more than 5 minutes had passed from the time Wayfield was reported in the children's room with the Menorah and when the Menorah was reported moved, then missing. I asked Convery to give me a description of Wayfield. Convery told me that he is an elderly white male about 60 years old, 5'10", white hair, wears glasses, dressed in a brown jacket and had white pants.

Convery described the Menorah as about 15"h x 15"l, made of metal with six candles. I also asked Convery and Achille to write a statement of events leading up to the alleged theft. (See attached statements dated 12-15-90.) Convery also provided me with Wayfield's address and phone number.

At about 1520 hrs., I left the library and drove to Wayfield's residence off Main St. I knocked on

Wayfield's door and got no answer. I spoke to 2 neighbors, Mary Jacobs and a Mrs. Mayhew, I asked them to call the police if they see Wayfield come home.

I left Wayfield's house and returned to the library to pick-up Convery's and Achille's statements. As I was walking to my cruiser which was parked in front of the library on Main St., I saw a man walking north on Main St. matching the description given to me of David Wayfield. I approached the man who was wearing a brown suede jacket, and white pants. The man was carrying an open umbrella to shield himself from the rain. The man was also carrying a canvas tote bag folded up under his right arm. I identified myself to him and asked him his name. The man first paused and said nothing. I asked him if he was David Wayfield. The man told me yes he was. I read Mr. Wayfield his constitutional rights per Miranda while he held his umbrella over me to shield me from the rain, I asked Wayfield if he had taken the Menorah from the library. Wayfield told me that that has to be discussed in a court of law. I asked Wayfield to return Menorah to me. Wayfield asked me if he was under arrest. I told Wayfield no. I asked Wayfield if he would mind sitting in the cruiser which was parked in front of the library so we could get out of the rain and discuss the matter. Wayfield asked me if he was under arrest. I told him no, I just want to

get out of the rain. Wayfield sat in the cruiser with me. I asked Wayfield if he had taken the Menorah from the library. Wayfield got angry and told me that the library has no Nativity scene and had no business displaying a zionist symbol. Wayfield again asked me if he was under arrest, I told him, at this time, he was not. Wayfield got out of the car and ran north on Main St. I followed him to his house, and at this time, I asked the OIC of the 4-12 shift to meet me on Main St. Ofcs. Stobie, Burt and Smith came to my location and I filled them in on the alleged theft.

At about 1610 hrs., I spoke to COnvery and was told the Menorah is the property of Library Trustee Kathleen Sawyer.

On 12-16-90 I spoke to Robert Sawyer who told me that the Menorah is valued at $100.00.

12-18-90 (15) At 1253 hrs., Mrsjorie Covnery into the police station with a letter that she thought may have to be delivered to David Wayfield. Ms. Covnery is the library director at the Vineyard Haven library. Ms. Covnery said she mailed two copies of the letter to Mr. Wayfield. One copy was sent certified mail and the other was sent parcel post. Ms. Convery said the Menorah was found in the children's room at the library. It was between a cassette book and a wall behind the door. The Menorah was found this morning at approx. 1100 hrs. by Corrine Ebbs and Patricia Blakesley, employees

at the library. Ms. Convery said the Menorah was not damaged and she did not beleive the Menorah was removed from the library, just put behind the door. [Holographic initials of:] "F.W."

On 12-19-90 at the 5PM meeting of the Library Trustees, a vote was taken to revoke Mr. Wayfield's library priveledges until April 2, 1991. A letter was sent to him certified return receipt requested notifying him of this. See copy of letter of notice to Mr. Wayfield dated 12-20-90. [Holographic initials of:] "J.M.C."

On 1-12-91 At about 1445hrs., I spoke to Marjorie Convery at the library, I asked Convery to tell me the events leading up to the find of the Menorah. Convery told me it would be easier for her to type out a statement. (See attached statement dated 1-11-91).

Reporting officers: Gately; Recording officer: Gately; Typed by: kls; Date and Time 1-14-91

Note: The above transcription includes typographical and grammatical errors of the original.